

EXHIBIT 4

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IN THE COURT OF COMMON PLEAS IN AND FOR
THE COUNTY OF MONTGOMERY, PENNSYLVANIA
CIVIL DIVISION

IN RE: : NO. 01-10504
: 04-02776
: 05-20924
BRIDGEPORT FIRE :
LITIGATION :

PETITION OF DONALD E. HAVILAND, JR., ESQ. FOR
APPOINTMENT AS LEAD COUNSEL FOR THE CLASS and
PLAINTIFFS' MOTION TO STRIKE PRAECIPE

Courtroom H
Friday, December 1, 2006
Commencing at 9:55 a.m.

Virginia M. Womelsdorf
Official Court Reporter
Montgomery County Courthouse
Norristown, Pennsylvania

BEFORE: THE HONORABLE STEVEN T. O'NEILL, JUDGE

1

2 COUNSEL APPEARED AS FOLLOWS:

3

SHANIN SPECTER, ESQUIRE
THOMAS KLINE, ESQUIRE
JASON PEARLMAN, ESQUIRE
for the Class Plaintiffs

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DONALD E. HAVILAND, JR., ESQUIRE
ADAM S. LEVY, ESQUIRE
MICHAEL LORUSSO, ESQUIRE
for the Movant

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I N D E X

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4 CLASS PLAINTIFFS EVIDENCE

5 Witness Direct Cross Redir Recr

6 RICHARD SOKORAI, ESQ. 7 18 -- --

7 DONALD HAVILAND, JR., ESQ. 211 -- -- --

8

9 MOVANT'S EVIDENCE

10 JEFF PURDY 28 -- -- --

11 SHANIN SPECTER, ESQ. 83 138 -- --
(As on Cross)

12

PAUL BAKER BARTLE, ESQ. 152 179 -- --

13

14

15

16

E X H I B I T S

17

18 MOVANT'S

19 Number Marked Rec'd

20 HLF-1 through HLF-24 -- 191

21 HLF-25 Praeipce for dismissal 37 147

22 HLF-26 Printout of Kline and 94 --
Specter web page

23

24

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2 EXHIBITS (Cont'd)

3

4 MOVANT'S

5 Number Marked Rec'd

6 HLF-27 Printout of Kline and 94 147
Specter web page

7

8 HLF-28 Printout of Kline and 97 147
Specter web page9 HLF-29 Legal Intelligencer 100 147
Article

10

11 HLF-30 Settlement Agreement and 120 147
Release12 HLF-31 Document 123 --
(Stricken)

13

14 HLF-32 Document 123 --
(Stricken)15 HLF-33 Document 127 --
(Stricken)

16

17 HLF-31 Construction Loan 156 --
Agreement

18

19

20 CLASS PLAINTIFFS'

21 Number Marked Rec'd

22 Class Counsel-4 Notice to Attend 278 --

23 Class Counsel-5 11/29/06 letter 278 --

24

1

2 today, we'll go Tuesday.

3

MR. KLINE: We're ready, Your

4 Honor.

5

MR. HAVILAND: Your Honor,

6 again, I object to the production of the bank

7 records in any open forum, whether it be done with

8 these lawyers or with these lawyers. And I ask you

9 to certify that for immediate appeal, because --

10

THE COURT: And I am not doing

11 it. We're going to have the hearing and if you

12 want to preserve your issues for appeal, you're

13 going to have a good record to do it in.

14

I have already said how the

15 Court can protect what I don't even understand what

16 your interest is. I don't even get where you even

17 have basis for your objection. I don't get it.

18

MR. HAVILAND: We have a motion

19 to quash, Your Honor.

20

THE COURT: I get you. And I'm

21 denying the motion to quash, because you haven't

22 even given me a basis for a protective order.

23

MR. HAVILAND: Your Honor, I

24 would ask that we defer this until next week so I

25 can confer with counsel and interpose an objection.

1

2 MR. KLINE: He wants the time

3 so that he can file an appeal.

4 THE COURT: Hold on. Hold on.

5 MR. SPECTER: Right.

6 MR. KLINE: That's what he

7 wants the time for.

8 THE COURT: Look, I want to

9 move on with it. I can't stop you if I can't have

10 your hearing today, so you can run out and say

11 there is an objection that was overruled. There

12 was a motion made that was denied. Those are the

13 two things you seem to be doing here, right?

14 You'll, one, object to them

15 calling you as a witness and examining your bank

16 records, and before that you put a motion for

17 protective order in there so that you wouldn't have

18 a public disclosure of your bank records.

19 MR. HAVILAND: Right. And we

20 made an offer to the Court to make a disclosure.

21 THE COURT: So now on the

22 objection being denied, I guess you believe you

23 could take that objection up somehow.

24 MR. HAVILAND: I believe it's a

25 collateral order, Your Honor.

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2 THE COURT: An objection

3 denial?

4 MR. HAVILAND: No. The

5 objection to quash.

6 THE COURT: I hear you. So the

7 objection I denied.

8 Now you have a motion to quash

9 a what? The production of records?

10 MR. HAVILAND: Correct.

11 THE COURT: Okay. And I will

12 deny that motion, because you haven't even -- all

13 you did is say, I want it. You didn't explain one

14 thing, one reason. You didn't put anything on the

15 record as to why you wouldn't produce those

16 records, why you shouldn't have to produce them,

17 other than now to say you've already exposed your

18 hand to say, please deny it so I can go ahead and

19 get an immediate appeal to the Superior Court.

20 Sounds to me like strategy.

21 MR. HAVILAND: Your Honor,

22 again, I made an offer to make a production to you

23 in camera. If you think at that point in time that

24 it needs to go beyond that, then you can make that

25 decision. In fairness, I believe Your Honor should

1

2 look at the issue in camera first before we take
3 another step.

4 MR. KLINE: Your Honor, we have
5 two different things --

6 THE COURT: I can probably
7 handle it. I have already made the decision that I
8 can protect you by keeping the record that you want
9 of this case, which we have put for many days we've
10 made a record of this, to have the record, clear
11 the courtroom so we at least can do it in this
12 room.

13 I will then review that
14 testimony. And if it needs to be sealed, I will
15 seal it, but how you would possibly say it couldn't
16 be part of a record of a case that you have brought
17 yourself, I can't figure.

18 So what I definitely don't want
19 you to do is to now say, okay, you're denied that
20 type of motion so that you can get an immediate
21 appeal to the Superior Court and delay this case.

22 MR. HAVILAND: No, Your Honor,
23 if I may, what we said in our motion to quash was
24 exactly what Mr. Specter said on the stand last

25 week, that the issue of counsel's finances has

1

2 never been disclosed in court and, in fact, if
3 disclosed in court, would be used by other parties
4 defense counsel.

5 MR. SPECTER: I didn't say
6 that.

7 MR. HAVILAND: Yes, he did.

8 THE COURT: Listen. Your
9 finances are relevant. Yours are relevant. You
10 tried to make theirs relevant. They've answered it
11 by saying to the Court's satisfaction, we will put
12 a million dollars in escrow if that becomes an
13 issue. Okay?

14 Now, I don't think it's an
15 issue for that firm, but that's at least the way
16 they've headed off any long inquiry to them which
17 you have still not to this date said that they do
18 not have the financial resources to handle this
19 case.

20 He cut you off, but you haven't
21 said it. If, in fact, you said it, I felt a
22 million dollars in escrow would be sufficient.

23 Now, we're on to you.

24 MR. HAVILAND: Okay.

25

THE COURT: It is very relevant

1

2 what your financial resources are.

3 MR. HAVILAND: Okay.

4 THE COURT: In your own case,

5 you never took the stand and dealt with that. You

6 have not dealt with it. You've danced around it.

7 You've said if they give me

8 that money over there, I'll be okay. And if this

9 couple of things work with that case, I'll be okay.

10 And if the Attorney General does this, I'll be all

11 right.

12 That's what you're doing,

13 instead of just getting on there and saying, I have

14 the adequate financial resources to do it. You

15 never once said that.

16 MR. KLINE: There is the second

17 issue, as well, Your Honor.

18 THE COURT: I hear you. I'm

19 going to get to that. That's your defense. You're

20 defending a motion by saying not only does this guy

21 not got the dough, but look what he was doing as

22 far as his own firm, he didn't disclose on it. I

23 get that, but we're not to that yet.

24 So I don't know where, you

25 know, where you would have any basis. So I'm

1

2 prepared to try to do something today, but at this
3 stage I mean I owe it to these Drug Court people to
4 get them in here. I have reserved Tuesday for
5 this.

6 MR. KLINE: We can use the
7 time, Your Honor, to go through the records and
8 conduct a clean examination of him as soon as your
9 Drug Court is over.

10 THE COURT: There is no chance
11 of a clean examination.

12 MR. KLINE: Well, an
13 examination that's efficient would be the way I
14 describe it. If we get the records right now --

15 THE COURT: Do you have the
16 records?

17 MR. HAVILAND: They're in my
18 office, Your Honor.

19 MR. SPECTER: You know, Judge,
20 last week he said they were in his custody and --

21 MR. KLINE: Oh, that's --

22 THE COURT: All right. All
23 right. Look, I get the emotional context of this,
24 but we've been living with it now for a few weeks.

25

MR. SPECTER: He's got notice

1

2 to attend --

3

MR. KLINE: And notice to bring

4 records.

5

MR. SPECTER: Exactly. He said

6 last week to the Court he had them in his custody

7 so there wouldn't be an issue. We sent him an

8 e-mail earlier this week -- I'm sorry. A fax

9 earlier this week saying that notice to attend --

10

MR. HAVILAND: I'm sorry, Your

11 Honor. I misspoke. I have them in the car.

12

THE COURT: All right. They're

13 in the car. They're in the car. Go get them from

14 the car and let them look at them. At least we can

15 use that time to some benefit. So set them up -- I

16 don't know where you --

17

MR. HAVILAND: Your Honor, I

18 don't intend to let them out of my custody.

19 They're original bank records.

20

THE COURT: I didn't expect you

21 to. You're going to sit with them and isn't that

22 going to be comfortable? That should be really

23 comfortable.

24

MR. HAVILAND: Last objection

25 on the record --

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2 THE COURT: The objection is on
3 the record. That objection is overruled. Your
4 motion to quash and even if it's to be taken as a
5 protective order, is denied. If you seek me to
6 certify it for immediate appeal, that is denied.

7 (Whereupon, a recess was taken
8 for Judge O'Neill to conduct Drug Court.)

9 THE COURT: All right. I
10 assume things didn't go that well back there.

11 MR. KLINE: No. We weren't
12 provided anything, Your Honor. Contrary, and in
13 violation of Your Honor's order, Mr. Haviland never
14 showed up, never brought the records, never came
15 back to meet with us. So we were sitting there
16 with the sheriffs for 45 minutes.

17 THE COURT: What were you
18 doing, Mr. Haviland? Now he's here. He's right
19 there.

20 MR. KLINE: He refused to show,
21 contrary to Your Honor's order.

22 THE COURT: What are you doing?

23 MR. HAVILAND: Your Honor, I
24 came to court. I'd like to make a statement for

25 the record that I again renew my offer to show the

1
2 Court in camera anything the Court wishes to ask of
3 me and my law firm with respect to financial
4 resources.

5 On the advice of counsel, I
6 have to respectfully decline to follow Your Honor's
7 order on the grounds that I think it's irrelevant
8 to this proceeding in terms of it has no bearing on
9 my firm's assets and the ability to finance this
10 case, which is the issue before the Court.

11 And to produce such records
12 anywhere outside of an in-camera proceeding would
13 be a violation of my privacy rights. And I'd ask
14 that the Court stay its decision until an immediate
15 appeal, which is being prepared right now with the
16 Superior Court be adjudicated so that we can
17 proceed from then on.

18 THE COURT: And I have already
19 denied it. I said I'm not going to do it.

20 At this stage, look, if you're
21 refusing to do it, I'm not going to sit here and
22 hold a contempt hearing and play all these games
23 here.

24 But if you're now telling me

25 that it's your position that you don't intend to

1
2 comply with a Court Order, which is nothing more
3 than to show them your asset records, that's what
4 we're dealing with first.

5 Then we've got to deal with the
6 next stage as to whether they can inquire of them.

7 I have already said that I
8 would implement something to protect whatever you
9 believe some privacy interest that you may have. I
10 can't even figure out what that is in a case such
11 as this where adequate financial resources are an
12 absolute relevant inquiry of this Court to make
13 here when you're claiming somehow it can be done by
14 affidavit, and I'm denying it being done by
15 affidavit.

16 At this stage I ordered you to
17 go back and show them the documents so that they
18 can look at them. And you're refusing to show the
19 documents, then you must not really want what
20 you're asking for.

21 If you're not willing in some
22 way -- the Court isn't going to do an in-camera
23 review of yours and not allow them to review the
24 same documents and inquire of them if they're

25 relevant as to your adequate financial resources.

1 HAVILAND - DIRECT

2 So that's it. So I mean at
3 this stage you're saying you're going to refuse to
4 cooperate with showing them the records. At this
5 stage I have denied your protective motion. I'm
6 denying you any automatic, you know, certification
7 of an interlocutory appeal there.

8 So I don't know what you want
9 me to do. I'm sure they're going to want me to
10 hold you in contempt at this stage. And that's a
11 whole separate hearing at this stage.

12 MR. SPECTER: Actually, Your
13 Honor, if I may, let's just get him up on the
14 witness stand and get going and we'll deal with the
15 issue of the bank records as we go.

16 THE COURT: All right. They're
17 calling Donald Haviland.

18 CLASS PLAINTIFFS' EVIDENCE

19 ---

20 DONALD E. HAVILAND, JR.,
21 ESQUIRE, having been duly sworn, was examined as
22 follows:

23 DIRECT EXAMINATION

24

1 HAVILAND - DIRECT

2 BY MR. SPECTER:

3 Q Mr. Haviland, did you pay to Mr. Williams
4 \$20,018.75 in or around June of 2006 from the
5 Haviland Law Firm account or other wise?

6 A I did not.

7 THE COURT: What was that
8 question?

9 (The court reporter read back
10 as follows:

11 "Question: Mr. Haviland, did
12 you pay to Mr. Williams \$20,018.75 in or around
13 June of 2006 from the Haviland Law Firm account or
14 other wise?"

15 BY MR. SPECTER:

16 Q Did the Haviland Law Firm pay any funds of any
17 type to Mr. Williams prior to September 7, 2006?

18 A No.

19 Q Is there any -- did you personally pay any
20 money to Mr. Williams prior to September 7th, 2006?

21 A Other than the fact that's not relevant to
22 this proceeding, the answer is no.

23 Q Did Haviland Law Firm make any expenditures
24 prior to September 7, 2006?

25 A I believe that question is broad.

1 HAVILAND - DIRECT

2 Q Please answer the question.

3 A I don't understand the question.

4 Q Did the Haviland Law Firm make any
5 expenditures prior to September 7, 2006?

6 A I don't understand the question.

7 Q Did the Haviland Law Firm spend any money
8 before September 7, 2006?

9 A As a going concern, no.

10 Q Let's not parse words here, Mr. Haviland. I'm
11 not talking about as a quote, going concern, or
12 not. You opened an account in June of 2006, right?

13 A No.

14 Q Well, you have -- there is an e-mail on your
15 Yahoo account which has been marked as Class
16 Counsel-3, which says, hey, I have set up my
17 Haviland Law Firm business account and transferred
18 substantial funds. And the date of that is June 7,
19 2006. Was that a false statement on your part?

20 A It was not and I object to using a private
21 e-mail in this proceeding.

22 Q It was not a false statement or was a false
23 statement?

24 A It was not a false statement.

25 Q Okay. How much money did you deposit into

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1 HAVILAND - DIRECT

2 to your car and get these things because your personal
3 counsel, the non-present Mr. Elliott, has told you not
4 to do it?

5 THE WITNESS: That's correct,
6 Your Honor.

7 THE COURT: All right. So he's
8 not getting it. He's going to violate this Court's
9 order to go out to his car and bring those documents
10 to the courtroom. So I don't know what his record is
11 for the Superior Court. Maybe he's going to try to,
12 you know, get Mr. Elliott to go up and, you know,
13 simply because it's Mr. Elliott, get them to give them
14 some kind of interim relief. But I don't know what
15 you're even going to be talking about because you
16 won't even bring them to the courtroom.

17 So at this stage you can ask him
18 questions or I'm going to have to convene a sanctions
19 hearing to deal with this.

20 MR. SPECTER: All right, Judge.

21 BY MR. SPECTER:

22 Q How many checks were written from the Haviland
23 Law Firm account between June 6th and September 7,
24 2006?

25 A I don't know.

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1 HAVILAND - DIRECT

2 Q Give me an estimate.

3 A Maybe less than ten.

4 Q To what vendors?

5 A I don't know.

6 Q Name any.

7 A A vendor that was working on a website.

8 Q When was that check written?

9 A Don't know.

10 Q In what amount?

11 A Can't say.

12 Q What month was the check written?

13 A I don't remember.

14 Q What other vendors?

15 A Can't think of any as I sit here today.

16 Q What bank were the funds deposited in?

17 A Commerce Bank.

18 Q What's the account number?

19 A I don't know it.

20 Q You got computers when, Mr. Haviland, for your

21 firm?

22 A Late September.

23 Q You got telephone when?

24 A Late September.

25 Q Didn't you have a cell phone that you -- that you

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1 HAVILAND - DIRECT

2 A That's right.

3 Q And then it says: "Phone, June 15th." Correct?

4 A That's what it says.

5 Q Not late September; right?

6 A That's what it says.

7 Q And it says: "Furniture, April 1st." Right?

8 A It says: "F-U-R-N."

9 Q Right. F-U-R-N standing for furniture; correct?

10 A Yep.

11 Q And then it says: "Website/e-mail, June 15th."

12 Correct?

13 A That's right.

14 Q Okay. Who are these vendors? Who was the

15 website vendor?

16 A I don't know their name as I sit here.

17 Q Who was the furniture vendor?

18 A There was none.

19 Q Who was the computer vendor?

20 A I can't think of the names as I sit here.

21 Q These are all things that we see in your check

22 ledger; right?

23 A Possibly.

24 Q Do you have a lot of credit, Mr. Haviland?

25 A Yes, I do.

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1 HAVILAND - DIRECT

2 Q With a bank?

3 A Yes.

4 Q Who's the bank?

5 A Well, I have several.

6 Q Okay. Well, for Haviland Law Firm, who was the
7 bank with whom you had a line of credit?

8 A I can't think of the name of the bank at this
9 point.

10 Q You cannot think of the name of the bank with
11 whom you have a line of credit?

12 A I can't think of it, no.

13 Q How much money do you have in a line of credit
14 with these banks?

15 A For the firm?

16 Q Yes.

17 A Current?

18 Q Let's deal first with how much financing you've
19 arranged for your firm. How much financing have you
20 arranged for your firm?

21 A I can't understand the question, Mr. Specter.

22 Q How much money have you arranged to borrow from
23 the bank in order to run your firm?

24 A Well, I'm dealing with cash right now. I have

25 cash.

233

1 HAVILAND - DIRECT

2 Q How much money have you arranged to borrow from a
3 bank in order to run your firm?

4 A I don't understand your question.

5 Q You've told us that you've gone to a couple of
6 banks and you've gotten lines of credit; correct?

7 A Yes.

8 Q How much money do you have in lines of credit,
9 total, with banks?

10 A I don't know as I sit here today.

11 Q Tell us which banks you have arranged these lines
12 of credit.

13 A You've asked me that question. I can't tell you
14 as I sit here today.

15 Q Tell us any one of the banks.

16 A I told you I have an account with Commerce Bank.

17 Q How much money do you have in a line of credit
18 with Commerce Bank?

19 A As I said, I can't tell you as I sit here today.

20 Q How is it secured?

21 A How is it secured?

22 Q Yes.

23 A Real estate.

24 Q What real estate?

25 A My real estate.

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1 HAVILAND - DIRECT

2 Q What were they?

3 A Insurance cases.

4 Q Where?

5 A All around. Montgomery County.

6 Q When is the last time you gave a closing speech

7 in a case?

8 A In a case like that?

9 Q In any case.

10 A 1994, 1993.

11 Q What case was that?

12 A I don't know.

13 Q Are you admitted to practice in the District of

14 Massachusetts?

15 A I'm admitted pro hac vice.

16 Q Are you a member of that Bar?

17 THE COURT: Can you wait one

18 second? Okay.

19 THE WITNESS: I'm sorry, I was

20 not done answering the question.

21 THE COURT: Answer it.

22 THE WITNESS: My answer was I'm

23 admitted pro hac vice for several matters in that

24 court.

25 BY MR. SPECTER:

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1 HAVILAND - DIRECT

2 Q Are you a member of that Bar?

3 A As I said, I'm admitted pro hac vice for several

4 matters.

5 Q Are you a permanent member of that Bar?

6 A No.

7 Q Are you a member of the Bar of the Eastern

8 District of North Carolina?

9 A I was admitted pro hac vice for purposes of one

10 matter.

11 Q Are you a permanent member of that Bar?

12 A No.

13 Q Your website before you took it down represented

14 you as being a member of those two bars, didn't it?

15 A It was a typographical error that neglected to

16 put in the pro hac vice language, which it now says.

17 Q Which it now says? The website is down, isn't

18 it?

19 A Well, it's being repaired, as I said,

20 Mr. Specter, at the beginning of my testimony.

21 Q This website was set up for two months without

22 that being repaired; correct?

23 A I don't know.

24 Q You read our response to your petition to name

25 class counsel; correct?

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1 HAVILAND - DIRECT

2 A I did.

3 Q You saw it in there that we pointed out that you

4 weren't a member of those Bars; correct?

5 A I read what you wrote.

6 Q How many weeks lapsed between your reading that

7 and your correcting the website?

8 A I don't know. I don't remember when you --

9 Q I can't hear you.

10 A I don't remember when you filed your papers.

11 Q Are you a member of the American Bar Association?

12 A I was up until the time that Kline and Specter

13 didn't pay the bill.

14 Q When you left Klein and Specter, were you a

15 member of the American Bar Association?

16 A I believed I was because Klein and Specter was

17 obligated to pay the bill from January of 2006, so for

18 nine months I believed that I was.

19 Q So that your answer is I was not a member of the

20 American Bar Association; correct?

21 A No, I believed that I was, Mr. Specter, because

22 we made filings before the Attorney General that

23 represented that fact and I believed that I was.

24 Q You say that you believe that you were, but, in

25 fact, you know that you weren't; correct?

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1 HAVILAND - DIRECT

2 A That's right.

3 Q So have you corrected your website in that

4 regard?

5 A That information has been taken out.

6 Q And how about the Pennsylvania Bar Association,

7 are you a member of the Pennsylvania Bar Association?

8 A I was in the better part of 2006, I believe.

9 Q You believe. Are you a member of the

10 Pennsylvania Bar Association?

11 A Again, not until receiving your papers and

12 realizing that Kline and Specter didn't pay the bill,

13 I didn't know that I wasn't a member of the

14 Pennsylvania Bar Association.

15 Q Have you corrected your website in that regard,

16 also?

17 A I've taken that information out.

18 Q Are you actively prosecuting the Vioxx class

19 action case in Atlantic County, New Jersey?

20 A I was up until the point in time when you wrote

21 an unsolicited e-mail to Mr. Seeger seeking to have me

22 taken off the case.

23 Q So the answer is you're not; is that correct?

24 A I am not today.

25 Q All right. Have you corrected your website in

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1 HAVILAND - DIRECT
2 that regard?

3 A I've taken the link or the reference to the Vioxx
4 case off the website.

5 Q What portion of the Bridgeport file do you
6 currently have?

7 A I have none of that paper file.

8 Q Pardon me?

9 A I have none of that paper file, other
10 than certain work files that were in my possession.

11 Q Okay. Well, here we have more parsing of words.
12 I'm not asking about paper versus electronic. How
13 much of the file do you have in any form?

14 A I don't know what the question means.

15 MR. SPECTER: Judge, please help
16 me.

17 THE COURT: I can't help you. I
18 mean, just tell us how much of the Bridgeport file do
19 you have?

20 THE WITNESS: I don't have any
21 of the paper file that -- I have certain electronic
22 things that I worked on while I was on my home
23 computer. I have some pieces of that. I've got work
24 files that I had in my possession when I left Kline

25 and Specter. What portion, I don't know. The file is